

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF TRANSPORTATION

In the Matter of the Petition of the City of  
Rogers for the Establishment of a New Public  
Grade Crossing Over the Burlington Northern  
Santa Fe Railway Tracks at Industrial  
Boulevard in the City of Rogers, Minnesota  
Pursuant to Minn. Stat. § 219.072

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ORDER

The above-captioned matter is pending before Administrative Law Judge Allan W. Klein pursuant to a Notice of and Order for Hearing dated May 1, 2001, and the request of Burlington Northern and Santa Fe Railway Company ("BNSF") to consolidate its Hynes Road Crossing Complaint with the above-captioned Petition into one proceeding.

Glenn Olander-Quamme, Attorney at Law, Spence, Ricke, Sweeney & Gernes, Suite 600, Degree of Honor Building, 325 Cedar Street, St. Paul, Minnesota 55101, represents BNSF. Roger J. Miller, Attorney at Law, Miller Law Firm, 9405 – 36<sup>th</sup> Avenue North, New Hope, MN 55427, represents the City of Rogers.

On or about July 18, 2001, BNSF brought to the Minnesota Department of Transportation a Petition for the Vacation of the Hynes Road Crossing (USDOT NO. 095660Y) in the City of Rogers, Minnesota, or, in the Alternative, for the Consolidation of the Hynes Road Crossing with a Proposed Industrial Boulevard Crossing matter. The City of Rogers consented to consolidation of the matters on July 19, 2001.

In December of 2001, the request for consolidation was brought before the Administrative Law Judge. The parties were informed of the request and provided with 10 days in which to inform the Judge of any objections. The record with respect to the motion to consolidate closed on December 15, 2001. The Administrative Law Judge did not receive any objections to consolidation.

Based upon all the files and proceedings herein, the Administrative Law Judge makes the following:

**ORDER**

1. That BNSF's Motion to Consolidate is **GRANTED**.
2. The attached Memorandum is incorporated herein.

Dated this 20<sup>th</sup> day of December 2001.

/s/ Allan W. Klein  
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ALLAN W. KLEIN  
Administrative Law Judge

## MEMORANDUM

Minn. Rules pt. 1400.6350 governs the consolidation of contested cases. The Rule provides as follows:

Subpart 1. Standards for consolidation. Whenever two or more separate contested cases present substantially the same issues of fact and law, that a holding in one case would affect the rights of parties in another case, that consolidating the cases for hearing would save time and costs, and that consolidation would not prejudice any party, the cases may be consolidated for hearing under this part.

Rule 42 of the Minnesota Rules of Civil Procedure contains similar language regarding consolidation. Rule 42.01 provides that:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The Minnesota courts have held that consolidation is permissive and rests within the discretion of the court.<sup>[1]</sup>

The issue for hearing in this matter is whether a new public grade railroad crossing should be established over the BNSF tracks at Industrial Boulevard in Rogers, Minnesota, pursuant to Minn. Stat. § 219.072 and Minn. R. 8830.2700-.2710.<sup>[2]</sup> The City proposes to extend Industrial Boulevard from its existing intersection with Hynes Road to County State Aid Highway (CSAH) 144. The extension of Industrial Boulevard would include a new railroad crossing while maintaining the existing Hynes Road crossing.<sup>[3]</sup> BNSF objects to the City's Petition, partly on the basis that the existing Hynes Road crossing and the proposed Industrial Boulevard crossing are located less than one-quarter mile apart.<sup>[4]</sup>

At issue in the City's Petition to add a public grade crossing and in BNSF's Complaint regarding the existing Hynes Road crossing is the proper number and location of public grade crossings in the City. Thus, these two matters present substantially the same issues of fact and law and consolidation of the two matters is likely to save time and costs. BNSF and the City of Rogers have agreed to consolidation of the two matters. There is no indication that consolidation would prejudice any party and no party objected to consolidation.

Upon review of the two matters proposed for consolidation, the administrative rule, the state rule, and applicable case law, the Administrative Law Judge concludes that the two cases have sufficient similarity in issues of fact and law to justify their consolidation. Based upon the commonality of the underlying facts in the two matters, the Judge finds that consolidation is appropriate.

In light of the consolidation of the two matters, the Administrative Law Judge requests that the parties reserve January 25, 2001 as a possible additional day for hearing.

BNSF also requested that Fred Busch, Veit Companies, and Hassan Township be made parties to the consolidated proceeding. Veit Companies was named as a party in the Notice and Order for Hearing, and is therefore a party to the consolidated proceeding. If Mr. Busch and Hassan Township were named as parties in either of the cases that are being consolidated, they are parties to the consolidated proceeding. If they were not so named, but wish to be parties to the consolidated proceeding, they should file a Petition to Intervene with the Judge pursuant to Minn. R. 1400.6200.

A.W.K.

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<sup>[1]</sup> See, e.g., *Shacter v. Richter*, 271 Minn. 87, 135 N.W.2d 66, 69 (1965).

<sup>[2]</sup> Notice and Order for Hearing at 3-4.

<sup>[3]</sup> City of Rogers, 2000 Industrial Boulevard Extension Proposed Railroad Crossing, SEH No. A-ROGER 9924.00 (January 3, 2000) at 1.

<sup>[4]</sup> BNSF Petition for the Consolidation of the Hynes Road Crossing [Matter] with [the City's Petition for] a proposed Industrial Boulevard Crossing, signed by counsel July 3, 2001.